IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 188 of 2004

Between:

Bhogireddy Padmavathi, W/o Pandudora,
R/o Yenamadurru, Bhimavaram Mandal,
West Godavari District.

..... PETITIONER

AND

1 The District Collector, West Godavari District, Eluru.
2 The Land Acquisition Officer and Revenue Divisional Officer, Narsapur,

West Godavari District.
3 The Mandal Revenue Officer, Bhimavaram Mandal, Bhimavaram,
West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or direction declaring the Notification in Roc.No.F5/SW/109/2003 dated 3-10-2003 issued by the 1st respondent herein under Section 4(1) of the Land Acquisition Act and the consequential Declaration in F.5/S.W/109/2003 dated 28-10-2003 issued by the 1st respondent herein Under Section 6 of the Land Acquisition Act as illegal, arbitrary, null and void and violative of Articles 14 and 300-A of the Constitution of India.

Counsel for the Petitioner:MR.A.V.SESHA SAI

Counsel for the Respondents: GP FOR REVENUE

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.188 OF 2004

ORDER:

The petitioner claims to be owner of agricultural wetland admeasuring Acs.3.22 in S.Nos.428/1 and 428/2 of Yenamadurru Village of Bhimavaram Mandal of East Godavari District having purchased the same under registered sale deeds executed in 1988, 1992 and 1998. First respondent herein issued a notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the Act) dt.3.10.2003, and published the same in the District Gazette proposing to acquire the land of the petitioner for the purpose of providing house sites to poor persons. The notification under Section 4(1) of the Act was followed by declaration under Section 6(1) of the Act, dt.28.10.2003, which was published in the District Gazette dt.4.11.2003. Aggrieved by the land acquisition proceedings, petitioner filed the instant Writ Petition seeking invalidation of the two notifications.

This Court admitted the Writ Petition on 6.1.2004 and by order made in W.P.M.P.No.270 of 2004 prohibited the respondents from taking possession of the land, but allowed all other proceedings to go on. The Mandal Revenue Officer has now filed a counter affidavit on behalf of the respondents and also filed W.V.M.P.No.823 of 2004 praying this Court to vacate the interim order. Though the interlocutory applications are listed, with the consent of the learned counsel for the

petitioner and the learned Assistant Government Pleader for Land Acquisition, the matter was heard finally and is being disposed of by this order.

In the counter affidavit filed, the various averments made in the petitioner's affidavit have been denied. It is further stated that the Land Acquisition Officer published notice under Section 9(1) and 10 of the Act besides serving notices to interested persons under Section 9(3) and 10 of the Act and directing the petitioner to appear for award enquiry on 8.1.2004. The allegation that there are 120 coconut trees is denied. It is further stated that the land is being acquired for the purpose of providing house sites to the weaker sections of people belonging to Schedules Castes, Backward Classes and economically Backward Classes.

Learned counsel for the petitioner, Sri A.V.Sesha Sai submits that the District Collector dispensed with the enquiry under Section 5A of the Act in a routine mechanical manner without applying mind and therefore the impugned notification is vitiated. He submits that in the year 1984, the Government has given an extent of Acs.7.00 of land for house sites and most of the allottees have not occupied the land, but sold away the land. Therefore, there is no urgency for acquiring the land for house sites for the persons belonging to the weaker sections. Secondly he would urge that as required under Section 17(5) of the Act, when the enquiry under Section 5A is dispensed with, possession has to be taken within three months. The respondents have not so far taken possession and therefore, the District Collector may be directed to conduct enquiry under Section 5A of the Act. **Per contra**, learned Assistant Government Pleader submits that even if the Government fails to take possession of the land after dispensing with enquiry under Section 5A of the Act, the proceedings are not vitiated. He placed reliance on the Division Bench judgment of this Court in **V.Adamma v. District Collector, Srikakulam.** He nextly contends that there is always an urgency for acquiring land for providing house sites and therefore exercise of power is proper.

First respondent acquired an extent of Acs.7.00 of land for providing house sites to 136 beneficiaries. The allegation that some of them sold the property is specifically denied in the counter affidavit filed by the Mandal Revenue Officer. It is also stated that if it is found that any of the beneficiaries sold away the plots, action would be initiated for resuming the land under the provisions of A.P. Assignment of Lands (Prohibition of Transfers) Act, 1977 and that no possession shall be given in violation of conditions of assignment. The allegation that there is alternate land available just opposite to the existing colony is denied. Further, it is now well settled that whether there is any need for public purpose or not is a question, which is left to the acquiring authority and it is not for the Court to say whether such need exists. Be that as it is, the question whether there is urgency for dispensing with enquiry is a question, which ordinarily cannot be subjected to judicial review. As held by the Supreme Court as well as this Court there is always an element of urgency for acquiring land for house sites to the weaker sections.

In **Janapareddy Venkateswara Rao v. District Collector, Eluru** this Court after referring to judgments of the Supreme Court in **Chameli Singh v. State of U.P.** and **Union of India v. Praveen Gupta** held that when the State proceeds to acquire the

land for providing house sites to weaker sections, there is always an element of urgency and that urgency would subsist till the housing problem of those sections of the community is solved. This Court also held that the decision of the Government on the question of urgency is an administrative decision, that it is matter of subjective satisfaction and that the Government need not record reasons for reaching such satisfaction. Satisfaction cannot be interfered with by the Court unless it is shown that exercise of power of eminent domain is nothing sort of colourable exercise of power.

The submission that the proceedings are invalid for not taking possession of the land within a period of three months in accordance with the provisions of Section 17(5) of the Act is misconceived. A Division Bench of this Court in **V.Adamma v. District Collector, Srikakulam** (supra) has declared such provision as *ultra vires* the parent Act observing as under:

…Therefore, while the State law imposes a condition that possession should be taken within three months from the date of publication of notice of the notification under Section 4 without any other requirement the Central Amendment does not prescribe any outer time limit but prescribes that 80 per cent of the compensation should be paid at the time of taking possession. These indicate that the Parliament has amended the section requiring conditions to be complied with for taking possession which are inconsistent with those prescribed by the State amendment. The tests referred to in Tika Ramji v. State of U.P.'s case when applied to the facts of this case clearly indicate that the State law has become inconsistent with or repugnant to the subsequent State amendment. … The contention of the counsel for the appellant that it is possible to obey both the Central amendment and the State amendment by the authorities adopting a particular course cannot be a test for examining the repugnancy of the two legislations as was pointed by B.N.Rau, J., in his judgment extracted by the Supreme Court. As a result it is held that sub-section (5) of Section 17 introduced by the State Amendment has been repugnant and void after the Central Amendment Act 68/84 and cannot be enforced.

Therefore, reliance placed by the learned counsel on Section 17(5) of the Act, is misconceived.

In the result, the Writ Petition fails and is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

30.8.2004

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